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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/685,406	10/16/2003	Judy A. Martin	23380.00	7856
37833	7590	09/19/2006	EXAMINER	
LITMAN LAW OFFICES, LTD PO BOX 15035 CRYSTAL CITY STATION ARLINGTON, VA 22215			HENDERSON, MARK T	
			ART UNIT.	PAPER NUMBER
			3722	

DATE MAILED: 09/19/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/685,406

Applicant(s)

MARTIN, JUDY A.

Examiner

Mark T. Henderson

Art Unit

3722

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 9/7/06.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-6,8,9,11-15 and 17 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-6, 8, 9, 11-15, 17 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)
Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED OFFICE ACTION

Faxing of Responses to Office Actions

In order to reduce pendency and avoid potential delays, TC 3700 is encouraging FAXing or responses to Office Actions directly into the Group at (571) 273-8300. This practice may be used for filing papers, which require a fee by applicants who authorize charges to a PTO deposit account. Please identify the examiner and art unit at the top of your cover sheet. Papers submitted via FAX into TC 3700 will be promptly forwarded to the examiner.

1. Claims 1 and 14 have been amended for further examination. Claims 7, 10 and 16 have been canceled.

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person

having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

2. Claims 1-6, 8, 9, 11, 15 and 17 are rejected under 35 U.S.C. 103(a) as being unpatentable over Newberry et al in view of Ferdon (1,536,429), and further in view of Newell (2002/0074792 A1).

Newberry et al discloses in Fig. 2, 3 and in Attachment I, a calendar comprising: a rigid unitary backing (20) defining a first section (20a) and a second section (20b); a single sheet (3), wherein the sheet can include any desirable indicia including “designs, and other graphic material” as stated in Col. 2, lines 38-40) disposed on the first section (20a) of the backing (20); a transparent protective plastic cover (40) disposed over the indicied sheet (3); an individual monthly calendar sheet (60) disposed on the second section (20b) of the backing (20s); and an attachment member (50) for removably attaching the calendar (60) to the backing (20).

However, Newberry et al does not disclose: a chart forming a chart grid having vertical and horizontal parallel arranged intersecting lines forming rows and columns and defining a plurality of memorandum spaces for permanently recording of events, ; and a calendar having indicia showing seven parallel vertical rows intersecting seven parallel horizontal columns defining memorandum spaces for removably imprinting events displayed on the chart.

Ferdon discloses in Fig. 3, a chart sheet (10) having vertical and horizontal parallel arranged intersecting lines forming rows and columns and defining a plurality of memorandum spaces (21); and further having indicia (“AUGUST RECORD”) adjacent the memorandum spaces; and having a sheet surface capable of retaining indelible ink thereon.

Therefore, it would have been obvious to one having ordinary skill in the art at the time the invention was made to modify Newberry et al’s calendar with a chart sheet having

intersecting rows and columns defining memorandum spaces as taught by Ferdon for providing an alternative chart display.

However, Newberry et al as modified by Ferdon does not disclose a calendar comprising erasable spaces.

Newell discloses in Fig. 2, and on Page 6, Par. 0084, an individual laminated monthly calendar sheet (110) comprising erasable surfaces.

Therefore, it would have been obvious to one having ordinary skill in the art at the time the invention was made to modify Newberry et al's and Ferdon's calendar with individual calendar sheets having erasable surfaces as taught by Newell for the purpose of using the sheets again.

In regards to **Claim 1**, wherein the memorandum spaces are used for permanently recording birthdays; and wherein; a recitation of the intended use of the claimed invention must result in a structural difference between the claimed invention and the prior art in order to patentably distinguish the claimed invention from the prior art. If the prior art structure is capable of performing the intended use, then it meets the claim. In a claim drawn to a process of making, the intended use must result in a manipulative difference as compared to the prior art. Therefore, the memorandum spaces of Newberry et al and Ferdon can be used to record any information as desired by the end user.

In regards to **Claims 2-6**, it would have been obvious to one having ordinary skill in the art at the time the invention was made to include as many columns or rows as desired, since it

has been held that mere duplication of the essential working parts of a device involves only routine skill in the art. Therefore, it would have been obvious to use any desirable number of columns or rows, since applicant has not disclosed the criticality of having a particular number of rows/columns, and invention would function equally as well with any number.

In regards to **Claims 4-6, and 17**, it would have been obvious to one having ordinary skill in the art at the time the invention was made to include any desirable indicia on the chart sheet, since it would only depend on the intended use of the assembly and the desired information to be displayed. Further, it has been held that when the claimed printed matter is not functionally related to the substrate, it will not distinguish the invention from the prior art in terms of patentability. The fact that the content of the printed matter placed on the substrate may render the device more convenient by providing an end user with a specific type of information document or form does not alter the functional relationship. Mere support by the substrate for the printed matter is not the kind of functional relationship necessary for patentability. Therefore, it would have been obvious to place any type of indicia on the chart display, since applicant has not disclosed the criticality of particular indicia and how it relates to the substrate (sheet), and the invention would operate equally as well with any type of indicia.

In regards to **Claim 8**, it would have been obvious to one having ordinary skill in the art at the time the invention was made to use any desirable material for the transparent protective cover, since it has been held to be within the general skill of a worker in the art to select a known material on the basis of its suitability for the intended use as a matter of obvious design choice. Therefore, it would have been obvious to construct the protective cover with any desired

material, since applicant has not disclosed in the specification or drawings (1-4B) the criticality of using a particular material, and invention would function equally as well with any desired transparent material.

3. Claims 12 and 13 are rejected under 35 U.S.C. 103(a) as being unpatentable over Newberry et al as modified by Ferdon, and Newell, and further in view of Roane (5,195,262).

Newberry et al as modified by Ferdon and Newell discloses a calendar comprising all the elements as disclosed in Claim 1, and as set forth above. However, Newberry et al does not disclose spaces disposed adjacent the monthly calendar sized and dimensioned for designating a current month and year.

Roane discloses in Fig. 1, a calendar sheet comprising indicia showing seven parallel vertical rows intersecting seven parallel horizontal columns defining spaces for removably imprinting events displayed on the chart; having blank date spaces sized for writing a number (as seen in Fig. 1); and wherein the seven rows include a top row displaying indicia representing the days of the week and defining a horizontal legend ("JANUARY").

Therefore, it would have been obvious to one having ordinary skill in the art at the time the invention was made to modify Newberry et al's, Ferdon's, and Newell's calendar with a calendar sheet having 7 x 7 row-column matrix defining spaces as taught by Roane for providing an alternative calendar display.

Allowable Subject Matter

4. Claim 14 is allowed.

5. The following is a statement of reasons for the indication of allowable subject matter: No prior art of record teaches or fairly discloses a birthday calendar comprising: a a first and second section; a single-sheet twelve-month chart disposed on the first section of the backing; the chart having vertical and horizontal parallel arranged intersecting lines imprinted thereon defining memorandum spaces; a transparent protective cover disposed over the chart; a monthly calendar disposed on the second section of the backing, wherein the monthly calendar is made from whiteboard; a plurality of attachment members for removably attaching the monthly calendar to the backing; wherein both the chart and the calendar are simultaneously visible.

The Newberry reference does disclose a calendar having a unitary backing defining a first and second section; a single sheet, which can comprise any indicia; and a transparent cover disposed over the chart. However, Newberry does not disclose wherein the monthly calendar is made from whiteboard.

Response to Arguments

Applicant's arguments with respect to claims 1-6, 8-17, 19 and 20 have been considered but are moot in view of the new ground(s) of rejection.

Newberry et al as modified by Ferdon and Newell now discloses a calendar as claimed by applicant.

Contact Information

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Mark T. Henderson whose telephone number is (571) 272-4477, and informal fax number is (571) 273-4477. The examiner can be reached on Monday-Friday from 9:00AM to 3:45PM. If attempts to reach the examiner by telephone are unsuccessful, the Examiner Supervisor, Monica Carter, can be reached at (571) 272-4475. The formal fax number for TC 3700 is (571) 273-8300.



MTH

September 14, 2006



MONICA CARTER
SUPERVISORY PATENT EXAMINER

FIG. 3

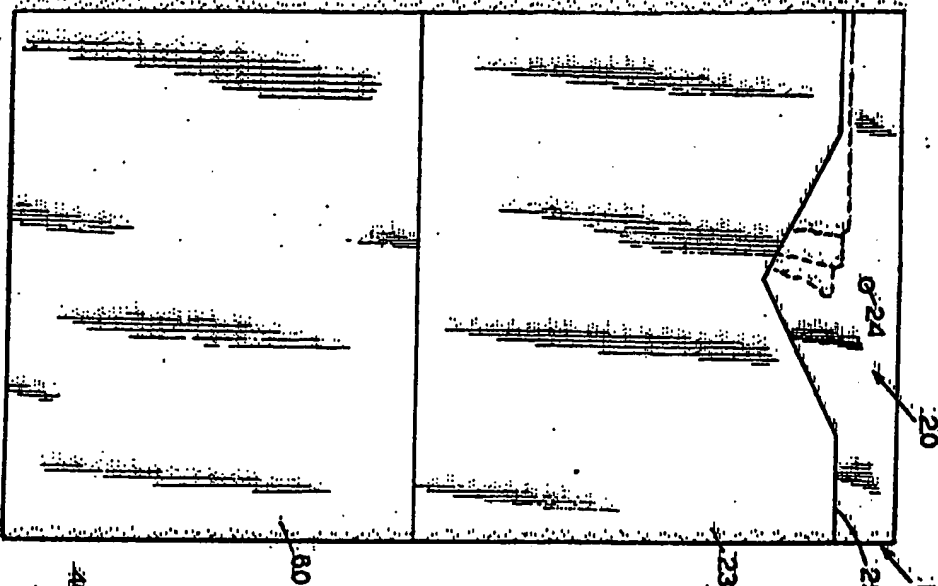


FIG. 2

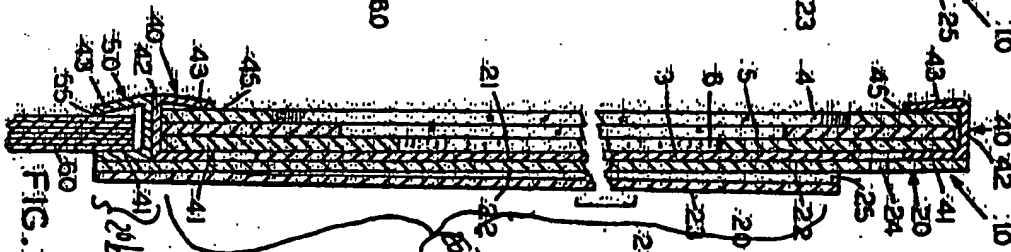


FIG. 1

